# SUPREME COURT OF THE UNITED STATES
# 2014-2015 TERM

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**SEARCH & SEIZURE – KNOCK & TALK**

**Carroll v. Carman, 135 S.Ct. 348 (2014), Decided November 10, 2014**

**FACTS:** On July 3, 2009, the Pennsylvania State Police (PSP) had a report that Zita "had stolen a car and two loaded handguns." The report included the information that Zita might have gone to Carman's home. Officers Carroll and Roberts went there to investigate; neither was familiar with the home or its occupants. They arrived about 2:30 p.m.

The Carman home sat on a corner lot, with the front to the main street and the left side to the side street. Parking was not available at the front so they pulled to the side street and stopped. There they could see several cars parked, side-by-side, in a gravel parking lot on the left side of the property. The officers parked near the far rear of the lot and got out. They could see a small structure, like a shed, "with its door open and light on." Thinking someone was inside, Officer Carroll walked to it, "poked [his] head in," and announced his agency. No one was inside, so they continued walking towards the house. They could see a sliding glass door that opened onto a ground-level deck and thought it "looked like a customary entryway." They approached to knock.

As the officers stepped onto the deck, however, a man emerged and "belligerently and aggressively approached" them. The officers identified themselves and stated they were looking for Zita, and also asked the man his name. He refused to answer, turned away and reached for his waist. Carroll grabbed the man's arm, but the man "twisted away from Carroll, lost his balance, and fell into the yard." A woman came out and asked what was going on – again they explained they were looking for Zita. She identified herself as Karen Carman, and the other man as her husband, Andrew Carman. She told them Zita was not there and consented to a search. Zita was not located during the search and the officers left.

The Carmans filed suit against Officer Carroll under 42 U.S.C. §1983, claiming he "unlawfully entered their property in violation of the Fourth Amendment when he went into their backyard and onto their deck without a warrant." The case went to trial. Carroll argued the entry fell under the "knock and talk" exception, contending that officers are allowed to knock on doors, "so long as they stay 'on those portions of [the] property that the general public is allowed to go on.'" The Carmans, however, argued that a normal visitor would have gone to the front door, not the back yard and the back deck. The jury returned a verdict for Carroll and the Carmans appealed.

The Third Circuit Court of Appeals reversed, however, holding that "Officer Carroll violated the Fourth Amendment as a matter of law because the 'knock and talk' exception 'requires that police officers begin their encounter at the front door, where they have an implied invitation to go.'" Further, it ruled that Carroll was not entitled to qualified immunity because that matter was clearly established in 2009. The Court gave the Carmans judgment as a matter of law.

Carroll then petitioned for certiorari, and U.S. Supreme Court granted review.

**ISSUE:** Is it clearly established that in a knock and talk, the front door must be approached first?

**HOLDING:** No

**DISCUSSION:** The Court began by noting that a "government official sued under 1983 is entitled to qualified immunity unless the official violated a statutory or constitutional right that was clearly established at the time of the challenged conduct."[1] A right becomes "clearly established only if its contours are sufficiently clear that 'a reasonable official would understand that what he is doing violates that right."[2] In this case, the Third Circuit cited to only a single case, Estate of Smith v. Marasco.[3]

In that case, officers went to the front door and received no answer; they proceeded to the backyard and at least one, into the garage. The record, however, did not fully describe the layout of the property or whether the officers followed an "apparently open route" to the garage. The Third Circuit concluded that "entry into the curtilage after not receiving an answer at the front door might be reasonable," but it would not follow automatically that officers could "go onto other parts of the property." The Supreme Court found, however, that Marasco "did not answer the question whether a 'knock and talk' must begin at the front door when visitors may also go to the back door." (The Court noted the Marasco home "seems not to have even had a back door, let alone one that visitors could use.") Marasco differed from the situation at the Carman home; and in this case, the jury agreed, the officer "restricted [his] movements to walkways, driveways, porches and places where visitors could be expected to go."

In fact, the Court agreed, "to the extent that Marasco says anything about this case, it arguably supports Carroll's view." Further, the Third Circuit's position was in conflict with decisions made by other circuits, in cases where officers approached a different outer door than the one that appeared to be the "front" door. Specifically, in U.S. v. Titemore, the Court found that approaching a glass sliding door was appropriate, when it appeared to be a "principal entrance to the home," accessed by "a route that other visitors could be expected to take."[4] In another case out of the Seventh Circuit, U.S. v James, officers approached the rear door of a duplex via a paved walk along the side of the building, when it was clear that door was a common entry point for visitors approaching from that direction.[5] Several other cases in a similar vein were cited as well.

The Court concluded that it need not decide whether those cases were, in sum, correct, but ruled that it was certainly not clearly established that the front door was the only door that could be approached during a knock and talk.

The Court granted Carroll's petition and reversed the decision of the Third Circuit. The case was remanded for further proceedings.

**FULL TEXT OF OPINION:** http://www.supremecourt.gov/opinions/14pdf/14-212_c07d.pdf

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[1] Ashcroft v. al-Kidd, 563 U.S. – (2011).
[2] Anderson v. Creighton, 483 U.S. 635 (1987).
[3] 318 F.3d 497 (3rd Cir. 2003).
[4] 437 F.3d 251 (2nd Cir. 2006).
[5] 40 F.3d 850 (1994).

**Heien v. North Carolina, 135 S.Ct. 530 (2014), Decided December 15, 2014**

**FACTS:** At about 8 a.m., on April 29, 2009, Sgt. Darisse (Surry County SD, NC) was watching traffic on I-77, near Dobson. He spotted a car pass by, and noted that the driver looked "very stiff and nervous." He began to follow and after a few miles, as the vehicle braked briefly, saw that only the left brake light came on. He then pulled the vehicle over, believing he had witnessed a traffic offense under state law.

Vasquez was driving and Heien lay across the back seat. Sgt. Darisse explained why he'd stopped the car, and indicated that so long as Vasquez's information checked out, he would only get a warning. Nothing was found and the warning was issued. However, Sgt. Darisse remained suspicious, as Vasquez appeared very nervous and Heien "remained lying down the entire time." They gave inconsistent responses about their destination. Darisse asked if they were transporting contraband, which both denied. Vasquez did not object to a search of the car, but indicated Sgt. Darisse would have to ask Heien, because he owned it. Heien also consented and the vehicle was searched. In the side compartment of a duffle bag, the officers found a baggie of cocaine; both men were arrested.

Heien was charged with attempted trafficking in cocaine. He moved for suppression, arguing that in fact, no traffic violation had been committed. The trial court ruled Sgt. Darisse had at least reasonable suspicion for the stop. Heien took a conditional guilty plea and appealed.

The North Carolina Court of Appeals reversed, finding that in fact, under state law, there was a question as to whether two working brake lights were required. The Court discussed the inconsistency between several traffic statutes and concluded that two brake lights were not required. As such, the court agreed the stop was "objectively unreasonable" and violated the Fourth Amendment. North Carolina appealed and the state Supreme Court reversed and reinstated the trial court decision (and subsequent plea). It noted that even if mistaken, it was reasonable for Sgt. Darisse to believe that both brake lights were required to be in "good working order."

Ultimately, Heien requested certiorari and the U.S. Supreme Court granted review.

**ISSUE:** May a mistake of law, made by an officer, still support an investigatory stop?

**HOLDING:** Yes

**DISCUSSION:** The Court agreed that a "traffic stop for a suspected violation of law is a 'seizure' of the occupants of the vehicle" and thus the Fourth Amendment applies. However, all that is required is "reasonable suspicion" and "the question here is whether reasonable suspicion can rest on a mistaken understanding of the scope of a legal prohibition."

The Court went on, noting that "to be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them 'fair leeway for enforcing the law in the community's protection.'"[6] The Court reiterated that searches and seizures based on mistakes of fact can be found to be reasonable.

[6] Brinegar v. U.S., 338 U.S. 160 (1949).

The Court continued:

> But reasonable men make mistakes of law, too, and such mistakes are no less compatible with the concept of reasonable suspicion. Reasonable suspicion arises from the combination of an officer's understanding of the facts and his understanding of the relevant law. The officer may be reasonably mistaken on either ground. Whether the facts turn out to be not what was thought, or the law turns out to be not what was thought, the result is the same: the facts are outside the scope of the law. There is no reason, under the text of the Fourth Amendment or our precedents, why this same result should be acceptable when reached by way of a reasonable mistake of fact, but not when reached by way of a similarly reasonable mistake of law.

The Court noted that precedent supported "treating legal and factual errors alike in this context." The Court looked to the most recent case, Michigan v. DeFillippo, and noted that it had ruled that an arrest based upon an ordinance later determined to be unconstitutional was valid.[7] In that case, it was reasonable for the officers to assume that the ordinance was legal, and that was all that was required.

Further, the Court disagreed with Heien's contention that the reasons that allowed for errors of fact "do not extend to errors of law." Heien argued that errors of fact made by officers of the field, making "factual assessments on the fly," may be entitled to leeway, but that errors of law do not. However, the Court noted that argument "does not consider the reality that an officer may 'suddenly confront' a situation in the field as to which the application of a statute is unclear – however clear it may later become." Further, ruling in North Carolina's favor "does not discourage officers from learning the law," as the "Fourth Amendment tolerates only *reasonable* mistakes, and those mistakes – whether of fact or of law – must be *objectively* reasonable." The Court noted that the evaluation is not subjective, and that it is not as forgiving as the assessment used in a qualified immunity consideration. "Thus, an officer can gain no Fourth Amendment advantage through a sloppy study of the laws he is duty-bound to enforce." The Court further noted that "just because mistakes of law cannot justify either the imposition or the avoidance of criminal liability, it does not follow that they cannot justify an investigatory stop."

The Court briefly addressed the confusion inherent in two state statutes that appeared, at least on the surface, to conflict, and which had never before been construed by the North Carolina appellate courts. The Court found it entirely reasonable that Sgt. Darisse believe it was a violation of state law to have only one working brake light.

The Court affirmed the decision of the North Carolina Supreme Court and upheld Heien's plea.

**FULL TEXT OF OPINION:** http://www.supremecourt.gov/opinions/14pdf/13-604_ec8f.pdf

[7] 443 U.S. 31 (1979).

## FEDERAL LAW (BANK ROBBERY)

### Whitfield v. U.S., 135 S.Ct. 785 (2015), Decided January 13, 2015

**FACTS:** Whitfield was fleeing police after a "botched bank robbery," when he entered Parnell's home through an unlocked door. He found a "terrified Parnell," age 79, inside, and "guided her from the hallway to another room, just a few feet away." There, she had a fatal heart attack. Whitfield fled and was apprehended nearby.

Among other crimes, he was indicted for forcing her "to accompany him in the course of avoiding apprehension for a bank robbery." He was convicted of that charge (among others) and appealed. The Fourth Circuit agreed as to his guilt. He requested certiorari and the U.S. Supreme Court granted review.

**ISSUE:** Does the "forced accompaniment" provision of federal bank robbery law require that the victim be taken any minimum distance?

**HOLDING:** No

**DISCUSSION:** The Court noted that the provision of the bank robbery statute in question had remained unchanged since it was passed in 1934, following an outbreak of bank robberies. As such, the Court noted the term "accompany" would have the same meaning as it did then, to "go with" the other person. It does not "connote movement over a substantial distance." The Court noted that "English literature is replete with examples" of the use of the term, quoting from Charles Dickens and Jane Austen, finding that the word did not require any specific distance.

The Court agreed, however that:

> It is true enough that accompaniment does not embrace minimal movement—for example, the movement of a bank teller's feet when the robber grabs her arm. It must constitute movement that would normally be described as from one place to another, even if only from one spot within a room or outdoors to a different one. Here, Whitfield forced Parnell to accompany him for at least several feet, from one room to another. That surely sufficed.

Whitfield argued that the severity of the punishment created by the enhancement militated against interpreting it to mean covering short distances. The Court, however, noted that the danger of a forced accompaniment was unchanged by the "distance traversed." As such, the Court held that the provision applied even if the distance involved was minimal, and upheld Whitfield's conviction.

**FULL TEXT OF DECISION:** http://www.supremecourt.gov/opinions/14pdf/13-9026_11o2.pdf

## PREGNANCY DISCRIMINATION

### Young v. United Parcel Service, 135 S.Ct. 1338 (2015), Decided March 25, 2015

**FACTS:** Young was a part-time driver for UPS. In 2006, she became pregnant and due to previous miscarriages, had been advised to lift no more than 20 pounds during her first 20 weeks, and no more than 10 pounds following that until the baby was delivered. UPS drivers, however,

were required to be able to lift parcels of up to 70 pounds unassisted and up to 150 pounds assisted. UPS would not allow her to work with the lifting restriction and as a result, she remained home without pay and without employee medical coverage either.

Young filed suit, claiming that "UPS acted unlawfully in refusing to accommodate her pregnancy-related lifting restriction." She claimed that co-workers were willing to assist her with lifting and more important, that UPS had accommodated other drivers with similar limitations. UPS responded that those "whom it had accommodated were (1) drivers who had become disabled on the job, (2) those who had lost their Department of Transportation (DOT) certifications, and (3) those who suffered from a disability covered by the Americans with Disabilities Act of 1990 (ADA)." UPS claimed that since Young did not fall into any of those categories, it had not discriminated against her.

The District Court ruled in favor of UPS, and the Fourth Circuit Court of Appeals affirmed. Young petitioned for certiorari and the U.S. Supreme Court granted review.

**ISSUE:** Must women who need temporary accommodations, such as lifting restrictions, during their pregnancy be treated in the same way as other employees who need such accommodations?

**HOLDING:** Yes

**DISCUSSION:** The Court reviewed the history of federal law with respect to pregnancy. Most important, in 1978, Congress passed the Pregnancy Discrimination Act which required that: "women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes . . . as other persons not so affected but similar in their ability or inability to work . . . ."[8]

The Court noted that this case required a consideration of how a "disparate treatment" claim should be applied – with an assertion that "an employer intentionally treated a complainant less favorably than employees with the 'complainant's qualifications' but outside the complainant's protected class."[9] In such cases, the Court agreed, liability "depends on whether the protected trait actually motivated the employer's decision."[10] Disparate treatment may be proven "either (1) by direct evidence that a workplace policy, practice, or decision relies expressly on a protected characteristic, or (2) by using the burdenshifting framework set forth in McDonnell Douglas."[11]

In McDonnell Douglas, the Court ruled that to the prove "disparate treatment, an individual plaintiff must 'carry the initial burden' of 'establishing a prima facie case' of discrimination by showing "(i) that he belongs to a . . . minority; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications."

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[8] 92 Stat. 2076.
[9] McDonnell Douglas Corp. v. Green, 411 U. S. 792 (1973).
[10] Raytheon Co. v. Hernandez, 540 U. S. 44 (2003).
[11] Trans World Airlines, Inc. v. Thurston, 469 U. S. 111 (1985).

If the subject overcomes that initial hurdle, the employer then has the opportunity ""to articulate some legitimate, nondiscriminatory reason for" treating employees outside the protected class better than employees within the protected class." If the employer is able to do so, the case goes back to the plaintiff to prove "that the legitimate reasons offered by the defendant [i.e., the employer] were not its true reasons, but were a pretext for discrimination."[12]

During discovery, Young argued that several other individuals had received similar accommodations, but most, although not all, involved injuries that occurred on the job. UPS has also provided similar "inside jobs" to drivers who were not able to drive for a variety of non-job-related issues, such as failed DOT tests due to medical issues. According to one shop steward, the only light duty requests that "became an issue" involved pregnancies. However, the trial and appellate courts found that UPS's policy was "pregnancy-blind" and thus, on its face, a "neutral and legitimate business practice" with no "animus toward pregnant workers."

The Court noted that certain changes made to federal law, specifically the ADA, following Young's pregnancy, must be considered. In 2008, the ADA's definition of disability was expanded to include "'physical or mental impairment[s] that substantially limi[t]' an individual's ability to lift, stand or bend."[13] As interpreted by the EEOC, employers are required to accommodate employees even if the temporary lifting restriction occurs off the job.[14]

The Court noted that there are several possible ways to interpret the existing law, when a "workplace policy that distinguishes between pregnant and nonpregnant workers in light of characteristics not related to pregnancy. " The Court agreed with UPS that there was no indication that "intended to grant pregnant workers an unconditional most-favored-nation status." The Court noted, however, that the guidance issued in connection with the PDA noted that pregnancy should be treated as "other temporary disabilities" with respect to disability insurance or sick leave.[15] However, the language of the statute does not help when assessing a situation in which "an employer does not treat all nonpregnancy-related disabilities alike." Later EEOC guidance attempted to clarify the ambiguity, stating that:

> … [a]n employer may not refuse to treat a pregnant worker the same as other employees who are similar in their ability or inability to work by relying on a policy that makes distinctions based on the source of an employee's limitations (e.g., a policy of providing light duty only to workers injured on the job)."[16] As such, the EEOC now states that light duty cannot be denied to a pregnant employee by use of a policy that "limits light duty to employees with on-the-job injuries."

However, the Court noted, it could not "rely significantly" on the guidance from the EEOC without more information as to how it came to its determination.

The Court concluded that:

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[12] Texas Dept. of Community Affairs v. Burdine, 450 U. S. 248 (1981).
[13] ADA Amendments Act of 2008, 122 Stat. 3555, codified at 42 U. S. C. §§12102(1)–(2).
[14] 29 CFR pt. 1630, App., §1630.2(j)(1)(ix).
[15] 29 CFR §1604.10(b) (1975).
[16] 2 EEOC Compliance Manual §626–I(A)(5), p. 626:0009 (July 2014).

> … an individual pregnant worker who seeks to show disparate treatment through indirect evidence may do so through application of the McDonnell Douglas framework. That framework requires a plaintiff to make out a prima facie case of discrimination. But it is "not intended to be an inflexible rule."[17] Rather, an individual plaintiff may establish a prima facie case by "showing actions taken by the employer from which one can infer, if such actions remain unexplained, that it is more likely than not that such actions were based on a discriminatory criterion illegal under" Title VII. Thus, a plaintiff alleging that the denial of an accommodation constituted disparate treatment under the Pregnancy Discrimination Act's second clause may make out a prima facie case by showing, as in McDonnell Douglas, that she belongs to the protected class, that she sought accommodation, that the employer did not accommodate her, and that the employer did accommodate others "similar in their ability or inability to work."

It would then fall to the employer to show a "legitimate, non-discriminatory" reason for the denial of an accommodation. The employee would have the opportunity "in turn [to] show that the employer's proffered reasons are in fact pretextual." Ultimately, it would fall to a jury to decide if the employer's reasons are strong enough to "give rise to an inference of intentional discrimination."

For example, if Young can:

> … show that UPS accommodates most nonpregnant employees with lifting limitations while categorically failing to accommodate pregnant employees with lifting limitations. Young might also add that the fact that UPS has multiple policies that accommodate nonpregnant employees with lifting restrictions suggests that its reasons for failing to accommodate pregnant employees with lifting restrictions are not sufficiently strong—to the point that a jury could find that its reasons for failing to accommodate pregnant employees give rise to an inference of intentional discrimination.

The Court noted that an employer's "general policy and practice" could be "evidence of pretext," in such cases, and that "circumstantial proof" can be used to "rebut an employer's apparently legitimate, nondiscriminatory reasons for treating individuals within a protected class differently than those outside the protected class."

In sum, the Court concluded the Fourth Circuit's decision must be vacated. The proof set forth by Young was enough to "create a genuine issue of material facts" under the McDonnell Douglas analysis, with proof of several different light duty accommodations acknowledged, as well as the shop steward's testimony that pregnancy was the only situation when this became an issue. The Court noted, in short, "why, when the employer accommodated so many, could it not accommodate pregnant women as well?"

**FULL TEXT OF OPINION:** **http://www.supremecourt.gov/opinions/14pdf/12-1226_k5fl.pdf**

[17] Furnco Constr. Corp. v. Waters, 438 U. S. 567 (1978).

## FOURTH AMENDMENT

### Grady v. North Carolina, 135 S.Ct. 1368 (2015), Decided March 30, 2015

**FACTS:** Grady was convicted to two separate sexual offenses, one involving a child, in North Carolina. Following the serving of the sentence for the latter crime, the North Carolina courts ordered that, as a recidivist, he was to wear a satellite-based monitoring (SBM) system. He objected to the wearing of the monitoring device, however, arguing that violated his Fourth Amendment rights. He was ordered to wear the device for the rest of his life.

Grady appealed, relying on the decision in U.S. v. Jones.[18] North Carolina rejected his argument, holding that it did not control in this case. Further appeals to the North Carolina courts were rejected. Grady requested certiorari and the U.S. Supreme Court granted review.

**ISSUE:** Is a civil monitoring program potentially a violation of the Fourth Amendment?

**HOLDING:** Yes

**DISCUSSION:** Grady argued that the requirement of a nonconsensual satellite-based monitoring device is a search within the meaning of the Fourth Amendment. Despite North Carolina's argument that the case was a civil proceeding, the Court noted that the Fourth Amendment "extends beyond the sphere of criminal investigations."[19] The Court agreed the "government's purpose in collecting information does not control whether the method of collection constitutes a search."

The Court noted that North Carolina's program "is plainly designed to obtain information," which it "does so by physically intruding on a subject's body." As such, it is a Fourth Amendment search. However, the ultimate question is whether it is an unreasonable search, and thus unconstitutional. Because the lower courts "did not examine whether the State's monitoring program is reasonable – when properly viewed as a search," the case was vacated and remanded back for further proceedings.

**Full Text of Opinion:** http://www.supremecourt.gov/opinions/14pdf/14-593_o7jq.pdf

## SEARCH & SEIZURE – K-9

### Rodriguez v. U.S., 135 S.Ct. 1609 (2015), Decided April 21, 2015

**FACTS:** On March 27, 2012, just after midnight, Officer Struble (Valley PD, Nebraska) watched a vehicle veer slowly onto the shoulder of a state highway for a few second, and then "jerk back onto the road." Since Nebraska law prohibited driving on the shoulder, he made a traffic stop. Along with Officer Struble was his K-9, Floyd. Rodriguez was driving the vehicle and Pollman occupied the front passenger seat.

[18] 132 S.Ct. 945 (2012).
[19] Ontario v. Quon, 560 U.S. 746 (2010).

Struble approached on the passenger side. Rodriguez identified himself and explained that he'd swerved to avoid a pothole. Struble gathered the documents and asked Rodriguez to accompany him back to the patrol vehicle. Rodriguez asked he was required to do so, and "Struble answered that he was not." Rodriguez elected to stay in his own vehicle. After running a records check on Rodriguez, Struble returned and questioned Pollman, obtaining his ID. He asked about their travel plans. Struble returned to his car to do a records check on Pollman, and requested back-up. He wrote up a warning ticket for the violation. On his third trip to the car, by about 12:28, he issued the warning and returned all of the documents he was holding. Nevertheless, he later stated, he did not consider the pair "free to leave." He asked for consent to walk his dog around the vehicle, which Rodriguez denied. "Struble then instructed Rodriguez to turn off the ignition, exit the vehicle, and stand in front of the patrol car to wait for the second officer." When a deputy arrived, a few minutes later, Struble had Floyd circle the vehicle. Floyd alerted on his second pass and ultimately, a large bag of methamphetamine was found. "All told, seven or eight minutes had elapsed from the time Struble issued the written warning until the dog indicated the presence of drugs."

Rodriguez was indicted in federal court for the methamphetamine. He moved for suppression, which was denied. Although the court agreed there was nothing to support the detention, he concluded that the short detention was "only a de minimis intrusion on Rodriguez's Fourth Amendment rights and was therefore permissible." Rodriguez took a conditional guilty plea and appealed.

The Eighth Circuit Court of Appeals affirmed, on the same grounds. Rodriguez requested certiorari, and the U.S. Supreme Court granted review.

**ISSUE:** May a traffic stop be prolonged, absent at least reasonable suspicion, to allow for a drug sniff by a K-9?

**HOLDING:** No

**DISCUSSION:** The Court agreed that a "seizure for a traffic violation justifies a police investigation of that violation," and is more akin to a Terry stop than an arrest. "Like a Terry stop, the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's "mission"—to address the traffic violation that warranted the stop."[20] "Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." In both Caballes and Johnson, the Court emphasized that an unrelated investigation can be done, so long as it "did not lengthen the roadside detention."[21] Additional inquiries might include "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance."[22] The Court noted, however, that a "dog sniff, by contrast, is a measure aimed at 'detect[ing] evidence of ordinary criminal wrongdoing.'"[23] The Court noted that the critical question is "not whether the dog sniff

[20] Illinois v. Caballes, 543 U.S. 405 (20050; See also U.S. v. Sharpe, 470 U. S. 675 (1985); Florida v. Royer, 460 U. S. 491 (1983).
[21] Terry v. Ohio, 392 U.S. 1 (1967); Arizona v. Johnson, 555 U. S. 323 (2009).
[22] See Delaware v. Prouse, 440 U. S. 648 (1979).
[23] Indianapolis v. Edmond, 531 U. S. 32 (2000). See also Florida v. Jardines, 569 U. S. 1 (2013).

occurs before or after the officer issues a ticket … but whether conducting the sniff 'prolongs' … 'the stop.'"

Because the question of whether reasonable suspicion was present to justify "detaining Rodriguez beyond completion of the traffic infraction investigation," the Court vacated the lower court's decision and remanded the case to the trial court for further proceedings.

**FULL TEXT OF OPINION:** http://www.supremecourt.gov/opinions/14pdf/13-9972_p8k0.pdf

**FIREARMS**

**Henderson v. U.S., 135 S.Ct. 1780 (2015), Decided May 18, 2015**

**FACTS:** Following his arrest for a felony, Henderson was required to turn over lawfully owned firearms. He ultimately pled guilty to the felony and as such, under 18 U.S.C. §922(g), was prohibited from possessing firearms. He asked the FBI, which held the weapons, to transfer them to a friend who had purchased them. The FBI refused and Henderson went to court, seeking the transfer to either his wife or a friend. The District Court denied him, finding that the "requested transfer would give him constructive possession of the firearms in violation of §922(g)." Upon appeal, the Eleventh Circuit affirmed the rule.

Henderson sought certiorari, and the U.S. Supreme Court granted review.

**ISSUE:** May a court approve the transfer of a felon's guns, being held by law enforcement, to a third party?

**HOLDING:** Yes

**DISCUSSION:** The Court noted that in fact, §922(g) proscribes only possession, but not necessarily ownership. That possession, however, may be actual or constructive, and both are prohibited. The Court noted that "actual possession exists when a person has direct physical control over a thing," while "constructive possession is established when a person, though lacking such physical custody, still has the power and intent to exercise control over the object." All parties agreed that "§922(g) prevents a court from ordering the sale or other transfer of a felon's guns to someone willing to give the felon access to them or to accede to the felon's instructions about their future use." The Government argued that by selecting the "first recipient" – a felon would still be in constructive possession of the weapons – and that the only permissible transfer occurs when the guns are transferred "to a licensed dealer or other party who will sell the guns for him on the open market."

The Court, however, found that the "Government's theory wrongly conflates the right to possess a gun with another incident of ownership, which §922(g) does not affect: the right merely to sell or otherwise dispose of that item." In this situation, the felon will have nothing to do with the weapons "before, during, or after the transaction in question, except to nominate their recipient." In such situations, the Court noted "the arrangement serves only to divest the felon of his firearms—and even that much depends on a court's approving the designee's fitness and ordering the transfer to go forward." Felons in this situation do not have any possession interests, but only "naked right of alienation—the capacity to sell or transfer his guns, unaccompanied by any control

over them." The Court ruled that all that matters "is whether the felon will have the ability to use or direct the use of his firearms after the transfer."

The Court ruled that the courts "may approve the transfer of guns consistently with §922(g) if, but only if, that disposition prevents the felon from later exercising control over those weapons, so that he could either use them or tell someone else how to do so." Turning them over to a firearms dealer would accomplish that aim, but also the transfer of the guns "to a person who expects to maintain custody of them, so long as the recipient will not allow the felon to exert any influence over their use." The trial court "may properly seek certain assurances: for example, it may ask the proposed transferee to promise to keep the guns away from the felon, and to acknowledge that allowing him to use them would aid and abet a §922(g) violation." If the Court is "satisfied that will be the case, the felon's request may be granted."

The Court vacated the decision of the Eleventh Circuit and remanded the case.

**FULL TEXT OF OPINION:** http://www.supremecourt.gov/opinions/14pdf/13-1487_l6gn.pdf

## USE OF FORCE

### City and County of San Francisco v. Sheehan, 135 S.Ct. 1765 (2015), Decided May 18, 2015

**FACTS:** In August, 2008, Sheehan was a resident in a group home for individuals with mental illness. She had a private room, but shared the common areas with the other residents. On August 7, Hodge, a social worker, went to conduct a welfare check, having become concerned that "Sheehan had stopped taking her medication, no longer spoke with her psychiatrist, and reportedly was no longer changing her clothes or eating." He knocked, but she did not answer. He entered with a key and found her lying on the bed. She did not respond, at first, but then jumped up and ordered him from the room, threatening that she had a knife and would kill him. He left, although he did not see a knife, and she slammed the door. Hodge cleared the building of the other residents and did an application for a temporary evaluation and treatment. He indicated she "was a 'threat to others' and 'gravely disabled,'" but he did not mark that she was a danger to herself. He then called the police for assistance.

Officer Holder responded. She reviewed the application and talked to Hodge. Sgt. Reynolds, a more experienced officer, was summoned and "brought up to speed." A hospital was forewarned of the pending transport. The officers, with Hodge, went to the room and knocked. The officers used Hodge's key to enter. Sheehan "reacted violently," grabbing a kitchen knife with a 5-inch blade and approached the officers, "yelling something along the lines of "I am going to kill you. I don't need help. Get out." The officers retreated into the hallway and called for backup.

With Sheehan back behind a closed door, they officers were concerned that she "might gather more weapons" – Reynold had glimpsed other knives in the room – or that she might flee out the second floor window. (They were unsure if the window was equipped with an escape ladder.)

> Reynolds and Holder had to make a decision. They could wait for backup—indeed, they already heard sirens. Or they could quickly reenter the room and try to subdue Sheehan before more time elapsed. Because Reynolds believed that the situation "required [their]

> immediate attention," the officers chose reentry. In making that decision, they did not pause to consider whether Sheehan's disability should be accommodated. The officers obviously knew that Sheehan was unwell, but in Reynolds' words, that was "a secondary issue" given that they were "faced with a violent woman who had already threatened to kill her social worker" and "two uniformed police officers."

Ultimately they decided that Holder would push the door open while Reynold sprayed Sheehan with OC. They also had weapons drawn. As they entered she again yelled at them to leave and may have again threatened them. When sprayed, she would not drop the knife, and from a few feet away, Holder and Reynold both shot her. When she fell, a third officer, who had just arrived, "kicked the knife out of her hand."

Sheehan survived. She was tried for the assaults and threats but ultimately, the jury was unable to reach a verdict and it was decided not to retry her. She then brought suit, arguing that San Francisco violated the Americans with Disabilities Act (ADA), "by subduing her in a manner that did not reasonably accommodate her disability." She also sued the officers under 42 U.S.C. §1983 for violating her Fourth Amendment rights.

The District Court ruled for the city and the officers, stating "that officers making an arrest are not required 'to first determine whether their actions would comply with the ADA before protecting themselves and others.'" It also ruled for the officers under the Fourth Amendment as well. Upon appeal, the Ninth Circuit vacated the portion of the decision relating to the ADA, concluding that it was up to a jury to decide whether San Francisco could have accommodated Sheehan's disability by using a different process, to defuse the situation. It further held that while entering the room was lawful, they "'provoked' Sheehan by needlessly forcing that second confrontation." The Ninth circuit ruled that "it was clearly established that an officer cannot 'forcibly enter the home of an armed, mentally ill subject who had been acting irrationally and had threatened anyone who entered when there was no objective need for immediate entry.'"

Both San Francisco and the officers petitioned for certiorari and the U.S. Supreme Court granted review.

**ISSUE:** Is it clearly established that officers must take a subject's disability into consideration while making a deadly force decision?

**HOLDING:** No

**DISCUSSION:** The Court began by noting that "Title II of the ADA commands that 'no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.'"[24]

Although the Court understood that San Francisco's argument was posed on the question as to whether the ADA "requires law enforcement officers to provide accommodations to an armed, violent, and mentally ill suspect in the course of bringing the suspect into custody," in its argument before the Court, San Francisco went in a different direction, arguing that "a person who poses a

[24] 42 U.S.C. §12132.

direct threat or significant risk to the safety of others is not qualified for accommodations under the ADA," By its change in direction, San Francisco "effectively concedes that the relevant provision of the ADA, 42 U. S. C. §12132, may 'requir[e] law enforcement officers to provide accommodations to an armed, violent, and mentally ill suspect in the course of bringing the suspect into custody.'" Because of that, the Court chose not to decide the question in this case, since there was no opportunity to have a true argument and dismissed the first question.

The second question related to whether the two officers could be held personally liable for Sheehan's injuries. The Court noted that "public officials are immune from suit under 42 U. S. C. §1983 unless they have 'violated a statutory or constitutional right that was clearly established at the time of the challenged conduct."[25] The Court agreed that "an officer 'cannot be said to have violated a clearly established right unless the right's contours were sufficiently definite that any reasonable official in [his] shoes would have understood that he was violating it,' meaning that 'existing precedent . . . placed the statutory or constitutional question beyond debate.'"[26]

The Court reviewed the facts, and noted that:

> …there is no doubt that the officers did not violate any federal right when they opened Sheehan's door the first time. Reynolds and Holder knocked on the door, announced that they were police officers, and informed Sheehan that they wanted to help her. When Sheehan did not come to the door, they entered her room. This was not unconstitutional. '[L]aw enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury."[27]

Since the second entry was "part of a single, continuous search or seizure, the officers [were] not required to justify the continuing emergency with respect to the second entry.[28] They knew Sheehan had a weapon, was making threats and "that delay could make the situation more dangerous." Even if in hindsight, mistakes were made, that does not negate the legality of their actions[29] given that "police officers are often forced to make split-second judgments."[30]

Once the door was open, the use of force was reasonable, with officers attempting OC spray first, and only resorted to deadly force when she came at them with a knife. "Nothing in the Fourth Amendment barred Reynolds and Holder from protecting themselves, even though it meant firing multiple rounds."

The Court focused in on the question as to "whether, despite these dangerous circumstances, the officers violated the Fourth Amendment when they decided to reopen Sheehan's door rather than attempting to accommodate her disability." But because the attorneys representing the officers barely briefed that question, the Court limited its decision to "whether the officers' failure to accommodate Sheehan's illness violated clearly established law. It did not. The Court noted that although Graham v. Connor[31] is the touchstone case, the facts were dramatically different. Lower

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[25] Plumhoff v. Rickard, 572 U. S. --- (2014)
[26] Ashcroft v. al-Kidd, 563 U. S. --- (2011)
[27] Brigham City v. Stuart, 547 U. S. 398 (2006). See also Kentucky v. King, 563 U. S. --- (2011) .
[28] Michigan v. Tyler, 436 U. S. 499 (1978)).
[29] Heien v. North Carolina, supra.
[30] Plumhoff, supra.
[31] 490 U.S. 386 (1989).

federal court cases, depending upon by the Ninth Circuit also, did not bear much resemblance factually, although they involved mentally ill subjects. The Court noted that no matter "how carefully a reasonable officer read" the cited cases, "that officer could not know that reopening Sheehan's door to prevent her from escaping or gathering more weapons would violate the Ninth Circuit's test, even if all the disputed facts are viewed in respondent's favor." The Court agreed that "without that 'fair notice,' an officer is entitled to qualified immunity." Even though arguably, the officers may have ignored certain procedures and training, with the Court noting that "given the generality of that training, it is not at all clear that Reynolds and Holder did so," an expert's report to that end was not be given a great deal of weight. It was certainly not determinative.

The Court noted that the officers were entitled to qualified immunity. The case was remanded back to the lower courts for consideration of the first question, however.

**FULL TEXT OF OPINION:** http://www.supremecourt.gov/opinions/14pdf/13-1412_0pl1.pdf

## RELIGIOUS DISCRIMINATION

**EEOC v. Abercrombie & Fitch Stores, Inc., 135 S.Ct. 2028 (2015), Decided June 1, 2015**

**FACTS:** Elauf is a female, practicing Muslim, who consistent with her faith, wears a hijab (a headscarf) to cover her hair. She applied for a position at an Abercrombie & Fitch clothing store, and was interviewed. Although the assistant manager rated her qualified to be hired, the manager was concerned that her headscarf would conflict with the store's "Look Policy," which prohibited, among other things, "caps." The manager sought clarification from higher-ups, and was told that the headscarf, despite being apparently attire consistent with a religious faith, violated the policy. The manager was instructed not to hire Elauf.

The EEOC sued Abercrombie on behalf of Elauf, for a violation of Title VII. The District Court ruled in favor of the EEOC and gave damages, but the Tenth Circuit Court of Appeals reversed the decision, concluding that "an employer cannot be liable under Title VII for failing to accommodate a religious practice until the applicant (or employee) provides the employer with actual knowledge of his need for an accommodation." The EEOC requested review and the U.S. Supreme Court granted certiorari.

**ISSUE:** Must a prospective employee actually request a religious accommodation before they have an action for failing to hire because of a need for such an accommodation?

**HOLDING:** No

**DISCUSSION:** Looking to Title VII of the Civil Rights Act of 1964, the Court noted that the law "prohibits two categories of employment practices." First, it prohibits an employer from failing or refusing to hire or to "discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin" and second, limiting, segregating, or classifying "his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin."

The first proscription is usually referred to as the disparate or intentional discrimination and the second is the disparate impact provision. Religion, in this statute, includes "all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to" a "religious observance or practice without undue hardship on the conduct of the employer's business."

Abercrombie argued that disparate treatment can't be shown until the applicant can prove that the "employer has 'actual knowledge' of the applicant's need for an accommodation." Instead, the Court ruled that the critical phrase in the law is "because of" – and all she needed to prove is that she was not hired "because of" her religious practice. Title VII's standard prohibits "making a protected characteristic a 'motivating factor' in an employment decision." The statute "does not impose a knowledge requirement," as some antidiscrimination statutes do, however.

> Thus, the rule for disparate-treatment claims based on a failure to accommodate a religious practice is straightforward: An employer may not make an applicant's religious practice, confirmed or otherwise, a factor in employment decisions. For example, suppose that an employer thinks (though he does not know for certain) that a job applicant may be an orthodox Jew who will observe the Sabbath, and thus be unable to work on Saturdays. If the applicant actually requires an accommodation of that religious practice, and the employer's desire to avoid the prospective accommodation is a motivating factor in his decision, the employer violates Title VII.

Because Title VII is silent on the issue, the Court agreed that its "disparate-treatment provision prohibits actions taken with the motive of avoiding the need for accommodating a religious practice." The Court agreed that a "no-headwear policy" would normally be allowed, but Title VII requires "otherwise-neutral policies to give way to the need for an accommodation."

The Court reversed the Tenth's Circuit ruling and remanded the case for further consideration.

**FULL TEXT OF OPINION:** http://www.supremecourt.gov/opinions/14pdf/14-86_p86b.pdf

## FREEDOM OF SPEECH

### Elonis v. U.S., 135 S.Ct. 2001 (2015), Decided June 1, 2015

**FACTS:** Elonis was an active user of Facebook, a social media site. In May, 2010, his wife left him, taking their two children. Upset, he began listening to violent rap music and composing his own rap lyrics, sharing them via a nom de plume (a pen name) of Tone Dougie. Lyrics he composed and posted used "graphically violent language and imagery." He posted disclaimers that persons described therein were fictitious and were not intended to resemble real persons. He explained to another Facebook user that his "writing was therapeutic." However, friends and coworkers became alarmed when, for example, he posted a photo of himself with a coworker at a Halloween event, where he was holding a toy knife to her neck, with "I wish." (She was not identified or tagged in the photo.) His boss, the chief of the amusement park security department where he worked, and where the photo was taken, was a Facebook friend, saw the photo, and fired him.

As a result, Elonis posted a message to Facebook suggesting he had keys to the facility and that he intended to become the "main attraction" at the amusement park. That conduct ultimately became the first count in his subsequent federal indictment. He also posted a lengthy message that suggested he wanted to kill his soon-to-be ex-wife, and posted a detailed "plan" about how the murder could be committed. His wife, made aware of the posting, ultimately got an order of protection, which triggered another message, suggesting that the order of protection could not protect her from a bullet. That threat triggered the second count, and a subsequent reference that he had "enough explosives" to take care of law enforcement became the third count. Count four came as a result of a threat to engage in a shooting at local elementary school.

Elonis's employer had brought the situation to the attention of the FBI. Agent Stevens created a profile to monitor his postings and following the school shooting reference, she and others paid him a visit. Elonis was "polite but uncooperative," and following the visit, posted lyrics entitled "Little Agent Lady," which indicated that he'd been wearing a bomb and had they frisked him, he would have detonated it. Count five came as a result of that threat.

Ultimately, Elonis was tried and convicted on the five counts involving various threats. At trial, he requested an instruction related to the federal law in question ….. and that proof was required that he intended to communicate a "true threat." He was denied that specific request, with the subsequent instruction indicating that a valid belief by the subject of the threat was all that was required, and that was emphasized in the Government's argument.

Elonis requested review by the Court of Appeals, which upheld his conviction. He then requested further review and the U.S. Supreme Court granted certiorari.

**ISSUE:** Does federal law require that an individual have the mental state to transmit a "true threat?"

**HOLDING:** Yes

**DISCUSSION:** The Court looked to the statute in question, which read that any person "who transmits in interstate commerce any communication containing any threat to kidnap any person or any threat to injure the person of another."[32] The statute does not provide for any particular mental state or whether a threat was even actually intended by the speaker. Dictionary definitions of threat indicate that the language of the communication is what is important, and whether it would cause a reasonable person to feel threatened. The government argued that other subsections did provide for the speaker's intent to be proven, and the failure to provide for it in (c) was deliberate. The Court, however, noted that "the fact that the statute does not specify any required mental state, however, does that mean that none exists."[33] General rules of statutory construction require that "wrongdoing must be conscious to be criminal." In other words, the subject must have a "guilty mind." Although "ignorance of the law" is not generally considered to be an excuse, the Court have required that the subject must know the facts sufficient to realize that they might be committing a crime. The Court explored a variety of cases in which it had found, and not found, that a subject would have fair warning that in fact, a crime was being committed.

[32] 18 U.S.C. §875(c).
[33] Morrissette v. U.S., 342 U.S. 246 (1952).

In other cases, the Court would read into the mens rea (the mental statue) only what was necessary to separate innocent conduct from potentially criminal conduct. In the statue in question, the Court agreed that what was needed was a communication and a threat. The standard put forth by the Government, however, was, in effect, a negligence standard. In Hamling v. U.S., the Court held, instead, the defendant must know the character of what was shared, not just the "contents and context."[34]

Because neither side had briefed or argued the case under the lesser reckless or negligence standard, the Court agreed that the matter was not ripe for adequate review. The case was remanded back to the trial court for further consideration.

**FULL TEXT OF OPINION:** http://www.supremecourt.gov/opinions/14pdf/13-983_7l48.pdf

***NOTE:*** *Depending upon the facts of a particular case, there is a possibility of charges under Kentucky state law, such as harassment or terroristic threatening.*

## CONFRONTATION CLAUSE

### Ohio v. Clark, 135 S.Ct. 2173 (2015), Decided June 18, 2015

**FACTS:** On March 17, 2010, Clark dropped off his girlfriend's son (L.P., age 3) at a Cleveland day care. (His girlfriend was hundreds of miles away, engaging in prostitution, at his behest.) In the lunchroom, a teacher, Whitley, noticed that L.P. had a bloodshot and bloodstained eye and she asked him what happened. He eventually said that he fell. Looking more closely, Whitley saw red "whip" marks on his fact and called over the lead teacher, Jones. Jones immediately took the child to Cooper, her supervisor, who further questioned him. He "seemed kind of bewildered" and identified his assailant as "Dee Dee;" the teachers recognized that to be his name for Clark. L.P. was new to the school and Jones was not sure he understood the question. Cooper told them that whoever saw the child first had to make a report, and the mandatory report for child abuse was made under Ohio state law.

In response, a county child services worker arrived to question L.P. While doing so, Clark arrived and denied responsibility for the injuries; he was allowed to leave with the child. The next day, the children (L.P. and his 2-year old sister) were located at the home of the girlfriend's mother, and both children were examined. Both showed signs of recent physical abuse.

Clark was charged with various counts of assault, endangering the children and domestic violence. L.P. was not allowed to testify at trial, as he was considered legally incompetent under Ohio law due to his age, but his out of court identification of Clark as his abuser was admitted. (This was done under an Ohio Rule of Evidence.) Clark was convicted of most of the charges. He appealed through the Ohio state courts, arguing that it was a violation of his Confrontation rights when the various individuals, teachers and law enforcement, who had questioned L.P. were permitted to testify as to what the child had said. The appellate court reversed and remanded the case; the state challenged only the exclusion of Whitley and Jones. The Ohio Supreme Court noted that state law "imposes a duty on all school officers and employees, including administrators and employees of child day-care centers, to report actual or suspected child abuse or neglect." It agreed that

[34] 418 U. S. 87 (1974).

questioning a student about a suspect injury is within that duty, but also did a "Confrontation Clause analysis" which requires that the court "ascertain the 'primary purpose' for the questioning." The Court noted that:

> … the circumstances objectively indicate that the primary purpose of the questions asked of L.P. was not to deal with an existing emergency but rather to gather evidence potentially relevant to a subsequent criminal prosecution. His teachers reacted to manifest signs of child abuse and complied with their statutory and professional duties to report it to child-protection authorities. They did not seem to believe his story that he had fallen and instead focused on who caused the injuries. Notably, Jones's first question on seeing L.P. was "Who did this?" And his teachers did not treat the situation as involving any ongoing medical emergency. L.P. did not complain of his injuries, he did not have any need for urgent medical care, and his teachers did not render any medical treatment. Immediately after L.P. responded, Whitley called 696–KIDS and made a report, and shortly thereafter, a social worker, Little, arrived at the school to further investigate the allegation of abuse; within two days, both teachers gave formal statements to police.

The Court noted that "when teachers suspect and investigate child abuse with a primary purpose of identifying the perpetrator, any statements obtained are testimonial for purposes of the Confrontation Clause." The Court upheld the lower court's decision to exclude the testimony of the teachers, holding them to be "agents of law enforcement" for the purpose of the questioning and the reversal of Clark's conviction.

The State requested certiorari and the U.S. Supreme Court granted review.

**ISSUE:** Does a statement made to a teacher by a young child implicate the Confrontation Clause?

**HOLDING:** No

**DISCUSSION:** The Court looked to Crawford v. Washington, in which the Court had concluded that the Sixth Amendment "prohibits the introduction of testimonial statements by a nontestifying witness, unless the witness is 'unavailable to testify, and the defendant had had a prior opportunity for cross-examination.'"[35] However, Crawford did not provide an "exhaustive definition of 'testimonial" statements.'" In later cases, including Davis v. Washington and Hammon v. Indiana,[36] the Court had "labored to flesh out what it means for a statement to be "testimonial," and created the 'primary purpose' test::

> Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.

[35] 541 U.S. 36 (2004).
[36] 547 U. S. 813 (2006).

In both cases, however, the statement in question was made to law enforcement. In Michigan v. Bryant, which also involved a statement made directly to law enforcement, the Court emphasized that it must "consider all of the relevant circumstances."[37] In particularly, it focused on an "ongoing emergency," and the "informality of the situation and the interrogation." The Court allowed that standard rules of evidence, in determining whether a statement could be considered reliable, would also be relevant. The Court agreed that "a statement cannot fall within the Confrontation Clause unless its primary purpose was testimonial," and if it is not testimonial, the decision falls to the respective state or federal rule of evidence.

In this case, the questioners were preschool teachers, not law enforcement, and as such, the Court was "presented with the question we have repeatedly reserved: whether statements to persons other than law enforcement officers are subject to the Confrontation Clause." Because some statements to non-law enforcement officers could raise a constitutional issue, the Court declined to adopt a categorical rule, while acknowledging that "such statements are much less likely to be testimonial than statements to law enforcement officers." With respect to L.P., the "statements occurred in the context of an ongoing emergency involving suspected child abuse." The teachers needed to determine if they would be able to release him to his guardian (Clark) at the end of the day, and their "immediate concern was to protect a vulnerable child who needed help." The Court equated the questioning to Davis, which although more harried, was also intended to identify a person involved in an ongoing situation. What they said was "informal and spontaneous."

Further, the Court agreed, "statements by very young children will rarely, if ever, implicate the Confrontation Clause," as they would not even understand the criminal justice system or the concept of prosecution. The Court agreed that such statements had long been admitted under the common law.

The Court concluded:

> Statements made to someone who is not principally charged with uncovering and prosecuting criminal behavior are significantly less likely to be testimonial than statements given to law enforcement officers. It is common sense that the relationship between a student and his teacher is very different from that between a citizen and the police. We do not ignore that reality. In light of these circumstances, the Sixth Amendment did not prohibit the State from introducing L.P.'s statements at trial.

Further, the Court agreed, that Clark's attempt to equate the teachers to law enforcement, because of the mandatory reporting laws, was flawed. A "mandatory reporting statute[] alone cannot convert a conversation between a concerned teacher and her student into a law enforcement mission aimed primarily at gathering evidence for a prosecution."

The decision of the Supreme Court of Ohio was reversed and the case remanded for further proceedings.

**Full Text of Opinion:** http://www.supremecourt.gov/opinions/14pdf/13-1352_ed9l.pdf

[37] 562 U. S. 344 (2011).

**SEARCH & SEIZURE – MANDATORY DISCLOSURE**

**City of Los Angeles v. Patel, --- S.Ct. --- (2015), Decided June 22, 2015**

**FACTS:** Under Los Angeles city ordinance (the municipal code), every hotel operator must keep a record of all guests (collecting specific information) and make that information available to any LAPD officer upon demand. Guests paying with cash and who rent a room for less than twelve hours must provide photo ID, and that information must also be collected. For those using a credit card at an electronic kiosk, the credit card information must also be provided. That information must be kept at or near the reception desk for 90 days. Failure to provide the records upon demand was a misdemeanor.

A group of motel operators filed suit, challenging the constitutionality of the ordinance. The District Court ruled in favor of the City, finding that the motel operators "lacked a reasonable expectation of privacy in the records subject to inspection." The Ninth Circuit originally agreed and affirmed, but reversed its decision, finding that the business records are the hotel's private property.

The City requested certiorari and the U.S. Supreme Court granted review.

**ISSUE:** May municipalities require a business owner to submit to an examination of their business records without a court order (such as an administrative subpoena) or an exigent circumstance?

**HOLDING:** No

**DISCUSSION:** The Court looked first, as it always must, to the language of the Fourth Amendment. The Court agreed that "searches conducted outside the judicial process … are per se unreasonable," "subject only to a few specifically established and well delineated exceptions." This rule "applies to commercial premises as well as to homes." The Court characterized the search in this case, however, as a search that serves "a "special need" other than conducting criminal investigations: They ensure compliance with the record-keeping requirement, which in turn deters criminals from operating on the hotels' premises In administrative searches, the "the subject of the search must be afforded an opportunity to obtain precompliance review before a neutral decisionmaker. In this case, however, a business owner who refuses to produce the records "can be arrested on the spot." The Court noted, that all that is required is an opportunity for review, and it would only be required "in those rare instances where a hotel operator objects to turning over the registry." Such searches would be lawsuit if performed under an administrative subpoena, which can be obtained without probable cause. Further, in the rare situations where an operator may seek review, the records can be guarded until a hearing can be held.

The Court continued:

> Of course administrative subpoenas are only one way in which an opportunity for precompliance review can be made available. But whatever the precise form, the availability of precompliance review alters the dynamic between the officer and the hotel to be searched, and reduces the risk that officers will use these administrative searches as a pretext to harass business owners.

The Court noted that law enforcement may still seek consent to examine the records, and hotel operators may be compelled under proper administrative warrants, even those issued *ex parte*, or "if some other exception to the warrant requirement applies, including exigent circumstances." The Court disagreed with the argument that hotels are closely regulated businesses, noting that only four industries have historically had such a background of government regulation that they would have no reasonable expectation of privacy: liquor sales, firearms dealing, mining and running an auto junkyard. Unlike those businesses, operating a hotel does not pose a "clear and significant risk to the public welfare." Holding that a business is closely regulated is the exception, not the rule.

The Court affirmed the Ninth Circuit's ruling.

***NOTE: Kentucky does not have a comparable rule for hotels/motels, but does have similar statutes that apply to pawnbrokers, KRS 226.040, buyers of certain metals, KRS 433.890, and pharmacies, KRS 218A.1446. It is also possible that localities may have ordinances similar to that in question in this case.***

**FULL TEXT OF OPINION:** http://www.supremecourt.gov/opinions/14pdf/13-1175_2qe4.pdf

## FORCE – PRETRIAL DETAINEES

**Kingsley v. Hendrickson, --- S.Ct. --- (2015), Decided June 22, 2015**

**FACTS:** In April, 2010, Kingsley was booked into the Monroe County Jail (Sparta, Wisconsin) and housed in a cell block as a pretrial detainee. When he refused to follow an order by a correctional officer several times, he was issued a warning of a minor violation and potential disciplinary action, which was reported to Sgt. Hendrickson. In the process, he was going to be removed from his cell temporarily to remediate the problem that had triggered the violation. When he was ordered to comply with the removal, he objected and refused to get up, lying facedown on his bunk with his hands behind his back. Sgt. Hendrickson and Deputy Blanton entered to handcuff him, and Kingsley resisted by tensing his arms. He was handcuffed but still refused to get up. The jailers pulled Kingsley to his feet and he "then fell to his knees," claiming that his feet had been smacked against the bedframe and that the pain "was so severe that he could not walk or stand." He was carried out of the cell and placed facedown in the hallway, where he refused to explain his alleged foot injury. He was then taken to the new cell and placed facedown on the bunk. There was another struggle when, the officers alleged, they tried to take the cuffs off, and during which Kingsley argued they "smashed his head into the concrete bunk." Video of the situation was inconclusive because of the angle of the camera. Ultimately, Kingsley was Tased and the cell was cleared of all officers. 15 minutes later, they returned and removed the handcuffs, apparently without resistance. He was medically evaluated but refused the offer of a nurse.

In December, 2010, Kingsley brought suit under 42 U.S.C. §1983, arguing excessive force against Hendrickson and Deputy Jailer Degner, as well as claims against five other staff members. The trial court noted that "the case law that held that it was reasonable to use force against an inmate who refused to comply with orders but concluded that the issue in the case was "whether [the] defendants' response to plaintiff's obstinacy was reasonable under the circumstances or whether it was excessive and was intended to cause [the] plaintiff harm." Further, the Court noted, qualified immunity was not appropriate at this stage, and although the Court agreed that the Fourteenth Amendment "shocks the conscience" standard was the proper one in this case, it applied the Eighth

Amendment excessive force standard. Only Hendrickson and Deputy Jailer Degner remained in the case, however, as the claims against the other five were dismissed and not appealed.

At trial, both Hendrickson and Degner were found not liable, and Kingsley appealed, based upon the jury instructions, which he claimed were flawed. The U.S. Seventh Circuit Court of Appeals began with "a claim of excessive force, like the one at issue here, is, at bottom, one that seeks to impose liability for "physically abusive governmental conduct."[38] However, depending upon the circumstances, different Amendments are implicated. The Fourth Amendment applies to seizures, while the "the Eighth Amendment applies when, following the constitutional guarantees of our criminal process, there has been an adjudication of guilt and an imposition of sentence."[39]

However, in between "the status of arrestee and sentenced prisoner is the intermediate status of the detainee, who similarly is entitled to protection from physically abusive government conduct." In that situation, "the constitutional source of that protection lies in the right to be free from deprivations of liberty without due process of law."[40] In Kingsley's situation, as a "pretrial detainee," the "Fourteenth Amendment's Due Process Clause is the source of his substantive right and determines the applicable standards to evaluate his claim." The Seventh Circuit agreed that the Due Process Clause of the Fourteenth Amendment provides broader protections than the Eighth Amendment, and does not permit treatment of a prisoner that would equate to punishment. The Court noted that the question is "whether a particular action was taken "for the purpose of punishment or whether it is but an incident of some other legitimate governmental purpose." Such conduct must be more than simply negligent, however, but must rise to at least recklessness. Courts have struggled, however, with how to practically apply the difference since "the Supreme Court has not yet determined just how much additional protection the Fourteenth Amendment gives to pretrial detainees."

The Seventh Circuit stated that:

> Where, as here, force is employed in the course of resolving a disturbance, the pertinent inquiry is whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm. Factors relevant to that inquiry include whether jail officials perceived a threat to their safety and the safety of other inmates, whether there was a genuine need for the application of force, whether the force used was commensurate with the need for force, the extent of any injury inflicted, and whatever efforts the officers made to temper the severity of the force they used.[41]

The Court continued that the basic point in Bell is that "the central inquiry relevant in a Fourteenth Amendment case brought by a pretrial detainee is whether the state punished him—as opposed to whether it had merely held him, restricted him, or applied a measure of force in a manner consistent with and expected of constitutional restraints on liberty prior to trial."

The Court noted that "the existence of intent—at least recklessness—is a requirement in Fourteenth Amendment excessive force cases." The non-exhaustive list of factors given to the jury to consider

[38] Graham v. Connor, 490 U.S. 386 (1989).
[39] Ingraham v. Wright, 430 U.S. 651 (1977).
[40] Bell v. Wolfish, 441 U.S. 520, 535 & n. 16, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979).
[41] See also Forrest v. Prine, 620 F.3d 739 (7th Cir.2010); Lewis v. Downey, 581 F.3d 467(7th Cir.2009).

was "drawn almost verbatim" from Wilson v. Williams.[42] The Court had previously agreed that "some harm" was necessary in such cases, and there was no argument presented that tasing was a "harm per se." The Court agreed that the jury instructions were adequate and upheld the dismissal. Kingsley petitioned for certiorari and the U.S. Supreme Court granted review.

**ISSUE:** What standard should be applied to evaluate the legality of a use of force against an incarcerated pre-trial detainee?

**HOLDING:** Objective reasonableness

**DISCUSSION:** The Court began by nothing there were "in a sense, two separate state-of-mind questions" in this case. First concerns the defendant's state of mind with respect to his "physical acts" and the "physical consequences in the world" the other with whether the use of force was "excessive." The Court noted that no one denied that a series of physical acts involved were deliberate in this case, and the officers in this case did not dispute that they used force purposefully and knowingly, not accidentally or negligently.

That left the question – "the defendant's state of mind with respect to the proper interpretation of the force (a series of events in the world) that the defendant deliberately (not accidentally or negligently) used." In deciding such, the Court had to decide whether it should use an objective standard or a subjective standard. The Court agreed that with respect to that question, "courts must use an objective standard" – and that a "pretrial detainee must show only that the force purposely or knowingly used against him was objectively unreasonable."

Using that standard, however, the Court cautioned, cannot be mechanically done. Instead, it must be determined "from the perspective of a reasonable officer on the scene, including what the officer knew at the time, not with the 20/20 vision of hindsight."[43] In the jail environment, the Court must also look at the need to manage the facility and "preserve internal order and discipline and to maintain institutional security."[44]

In addition:

> Considerations such as the following may bear on the reasonableness or unreasonableness of the force used: the relationship between the need for the use of force and the amount of force used; the extent of the plaintiff's injury; any effort made by the officer to temper or to limit the amount of force; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether the plaintiff was actively resisting. We do not consider this list to be exclusive. We mention these factors only to illustrate the types of objective circumstances potentially relevant to a determination of excessive force.

The Court agreed that the "appropriate standard for a pretrial detainee's excessive force claim is solely an objective one." The Court agreed that pretrial detainees are protected from a use of form "that amounts to punishment." Even without an "expressed intent to punish," actions that are not

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[42] 83 F.3d 870 (7th Cir.1996).
[43] Graham v. Connor, 490 U. S. 386 (1989).
[44] Bell v. Wolfish, supra..

"rationally related to a legitimate nonpunitive government purpose" or that appear excessive, are prohibited.[45]

The Court agreed that such a standard is "workable" – and in fact consistent with other cases involving officers and a use of force – and that it "adequately protects an officer who acts in good faith." The Court agreed that an "an objective standard is appropriate in the context of excessive force claims brought by pretrial detainees pursuant to the Fourteenth Amendment."

The court vacated the decision of the Court of Appeals and remanded the case.

***NOTE: Although this case involved detention in an actual jail facility, the principles would apply to any situation in between the initial arrest and conviction. As such, any transport of an individual already being held, for example, an individual being transferred between counties prior to conviction, would implicate the precepts of this decision.***

**FULL TEXT OF OPINION:** http://www.supremecourt.gov/opinions/14pdf/14-6368_m6hn.pdf

## ARMED CAREER CRIMINAL ACT

**Johnson v. U.S., --- U.S. --- (2015), Decided June 26, 2015**

**FACTS:** By 2010, Johnson had a long criminal felony record. In that year, he drew the interest of the FBI because of his involvement in a white supremacy organization suspected of planning terrorist acts, including an attack on the Mexican consulate located in Minnesota, along with other locations. He showed the undercover agents an AK-47, other semiautomatic firearms and a large amount of ammunition. He was arrested and pled guilty to possessing the firearms, a violation of 18 U.S.C. §922(g).

Because of his prior felonies, including unlawful possession of a short barreled shotgun under Minnesota law, the government requested an enhanced sentence under the Armed Career Criminal Act.[46] It argued that three of the felonies qualified as "violent felonies," a prerequisite for the enhanced sentence.

The District Court agreed, and its decision was upheld by the Court of Appeals. Johnson requested certiorari and the U.S. Supreme Court granted review.

**ISSUE:** Is the residual clause of the Armed Career Criminal Act void for vagueness?

**HOLDING:** Yes

**DISCUSSION:** The Court looked first to the Fifth Amendment, and its promise that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law." Prior case law had noted that it violated the guarantee when someone's life, liberty or property" is taken from then "under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement."[47]

[45] See also Block v. Rutherford, 468 U. S. 576 (1984).
[46] 18 U.S.C. §924(e).
[47] Kolender v. Lawson, 461 U. S. 352 (1983).

Under the clause of the statute in question (referred to as the "residual clause), the stature requires a court to determine whether the underlying crime "involves conduct" that "presents too much risk of physical injury." The Court noted that enumerated offenses in the statute under the provision included burglary and extortion, which suggested that the analysis "goes beyond evaluating the chances that the physical acts that make up the crime will injure someone."

However, the Court noted, the clause is unconstitutionally vague.

> In the first place, the residual clause leaves grave uncertainty about how to estimate the risk posed by a crime. It ties the judicial assessment of risk to a judicially imagined "ordinary case" of a crime, not to real-world facts or statutory elements. How does one go about deciding what kind of conduct the "ordinary case" of a crime involves?
>
> At the same time, the residual clause leaves uncertainty about how much risk it takes for a crime to qualify as a violent felony. It is one thing to apply an imprecise "serious potential risk" standard to real-world facts; it is quite another to apply it to a judge-imagined abstraction. By asking whether the crime "otherwise involves conduct that presents a serious potential risk," moreover, the residual clause forces courts to interpret "serious potential risk" in light of the four enumerated crimes—burglary, arson, extortion, and crimes involving the use of explosives. These offenses are "far from clear in respect to the degree of risk each poses." The present case, our fifth about the meaning of the residual clause, opens a new front of uncertainty. When deciding whether unlawful possession of a short-barreled shotgun is a violent felony, do we confine our attention to the risk that the shotgun will go off by accident while in someone's possession? Or do we also consider the possibility that the person possessing the shotgun will later use it to commit a crime? The inclusion of burglary and extortion among the enumerated offenses suggests that a crime may qualify under the residual clause even if the physical injury is remote from the criminal act. But how remote is too remote? Once again, the residual clause yields no answers.
>
> We hold that imposing an increased sentence under the residual clause of the Armed Career Criminal Act violates the Constitution's guarantee of due process. Our contrary holdings in James[48] and Sykes[49] are overruled. Today's decision does not call into question application of the Act to the four enumerated offenses, or the remainder of the Act's definition of a violent felony.

The Court reverses the judgment of the Court of Appeals for the Eighth Circuit and remanded the case for further proceedings consistent with this opinion.

**FULL TEXT OF OPINION:** http://www.supremecourt.gov/opinions/14pdf/13-7120_p86b.pdf

[48] James v. U.S., 550 U.S. 192 (2007).
[49] Sykes v. U.S., 564 U.S. 1 (2011).

## EQUAL PROTECTION

**Obergefell v. Hodges, --- U.S. --- (2015), Decided June 26, 2015**

**FACTS:** Four states in the Sixth Circuit, including Kentucky, statutorily defined marriage is between one man and one woman. A total of 14 same-gender couples and 2 individuals with deceased partners filed suit in various courts, seeking to legalize same gender marriage in specific states in some of the cases, and seeking to enforce recognition of marraiges legally entered into in one state in a state that did not recognize same-sex marriages.

The District Courts of the individual states ruled in favor of the plaintiffs, but the Sixth Circuit reversed all decisions. The petitioners requested certiorari and the U.S. Supreme Court granted review.

**ISSUE:** Are marriages between persons of the same gender protected by the Fourteenth Amendment?

**HOLDING:** Yes

**DISCUSSION:** The Court reviewed the history of the marriage relationship, from a time when marriages were commonly "arranged" to the present. The Court also reviewed prior decisions in which it had overturned certain restrictions of marriage, for example, in Loving v. Virginia, in which it had ruled it was unconstitutional to prohibit marriage between interracial couples.[50] It also noted that it had overturned its own earlier decision in Bowers v. Hardwick when it ruled in Lawrence v. Texas that it was unconstitutional to criminalize same-gender consensual sexual conduct.[51]

The Court concluded that the right to marry was a fundamental right, and thus protected by the Fourteenth Amendment, and as such, a state could not prohibit it. (By this decision, it also ruled that a marriage legally entered into in one state must be recognized in all of the other states, as well.)

***NOTE:*** *Although not of direct relevance to law enforcement agencies, this will change, in effect, next of kin notifications and employment matters, once a couple enters into a legally recognized marriage.*

**FULL TEXT OF OPINION:** http://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf

## CAPITAL PUNISHMENT

**Glossip v. Gross, --- U.S. --- 2015, Decided June 29, 2015**

**FACTS:** Oklahoma prisoners sentenced to death filed suit, arguing that the first drug in the three-drug protocol in use "fails to render a person insensate to pain." Oklahoma's initial three drug protocol had included (1) sodium thiopental (a barbiturate) to induce a state of unconsciousness, (2) a paralytic agent to inhibit all muscular-skeletal movements, and (3) potassium chloride to induce

[50] 388 U. S. 1 (1967).
[51] 478 U. S. 186 (1986); 539 U. S. 558 (2003).

cardiac arrest. However, when Baze v. Rees,[52], was decided, with the Court agreeing that Kentucky's protocol did not violate the Eighth Amendment, death penalty opponents had convinced drug producers not to allow sodium thiopental (and later, a similar drug) from being purchased for the purposes of execution. Oklahoma then began to use a dose of midazolam, which the prisoners argued would "not render them unable to feel pain associated with the administration of the second and third drugs." If true, it could be argued that this would create an "unacceptable risk of severe pain" and would be a violation of the Eighth Amendment's prohibition against "cruel and unusual punishment."

The prisoners' filed suit, and also asked for a preliminary injunction to prevent executions to occur during the pendency of the action. The District Court denied the motion, ruling that the prisoners "failed to identify a known and available alternative method of execution that presented a substantially less severe risk of pain." The Tenth Circuit affirmed.

The prisoners requested certiorari and the U.S. Supreme Court granted review.

**ISSUE:** Does the drug protocol for an execution require proof that the subject will encounter no pain?

**HOLDING:** No

**DISCUSSION:** The Court reviewed the history of capital punishment, from hanging, to electrocution to the gas chamber, with one state still currently authorizing a firing squad, with various states using different methods at different times. At the current time, the most states currently use lethal injection, as the most humane method currently available. Most states, including Kentucky, use the three drug protocol that was initially used by Oklahoma, and encountered the same obstacle when the initial drug was made unavailable.

The Court noted that because it had ruled that capital punishment is constitutional, there must be a constitutional method by which to carry it out. The Court noted that "because some risk of pain is inherent in any method of execution, we have held that the Constitution does not require the avoidance of all risk of pain."

The Court continued:

> After all, while most humans wish to die a painless death, many do not have that good fortune. Holding that the Eighth Amendment demands the elimination of essentially all risk of pain would effectively outlaw the death penalty altogether.

As a result of issues with a particular execution, and its first use of midazolam as the alternative drug, Oklahoma modified its protocols. The District court agreed that the new safeguards, along with the massive dose of midazolam, would "make it a virtual certainty that any individual will be at a sufficient level of unconsciousness to resist the noxious stimuli which could occur from the application of the second and third drugs." Under Baze, the Court agreed, the petitioners were required to to demonstrate that the risk of severe pain presented by an execution protocol is substantial "'when compared to the known and available alternatives.'" The controlling opinion in

[52] 553 U. S. 35 (2008)

Baze first concluded that prisoners cannot successfully challenge a method of execution unless they establish that the method presents a risk that is "'sure or very likely to cause serious illness and needless suffering,' and give rise to 'sufficiently imminent dangers.'"[53]

To prevail on such a claim, "there must be a 'substantial risk of serious harm,' an 'objectively intolerable risk of harm' that prevents prison officials from pleading that they were 'subjectively blameless for purposes of the Eighth Amendment.'"[54] The controlling opinion also stated that prisoners "cannot successfully challenge a State's method of execution merely by showing a slightly or marginally safer alternative." Instead, prisoners must identify an alternative that is "feasible, readily implemented, and in fact significantly reduce[s] a substantial risk of severe pain." The Court agreed that there was insufficient evidence to indicate that the three-drug protocol would not be effective and affirmed the Tenth Circuit.

***NOTE:*** *This decision will also apply to Kentucky's current one or two drug execution protocol.*

**Full Text of Opinion:** **http://www.supremecourt.gov/opinions/14pdf/14-7955_aplc.pdf**

[53] Id., (quoting Helling v. McKinney, 509 U. S. 25, 33 (1993)).
[54] 553 U. S. at 50 (quoting Farmer v. Brennan, 511 U. S. 825 (1994)).